

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES' AMENDED¹ MOTION FOR PROCEEDING ON REVOCATION
OF ORDER OF RELEASE

The United States respectfully submits this motion under 18 U.S.C. § 3148 to initiate a proceeding for revocation of an order of release on conditions pending sentencing. Because the United States alleges that the Defendant is unlikely to abide by conditions of release, the United States respectfully asks the Court to decide this motion expeditiously.

On June 27, 2019, the Defendant was indicted (Doc. 2) on two counts of making a false statement on a loan or credit application in violation of 18 U.S.C. § 1014. On July 11, 2019, the Defendant made an initial appearance and Magistrate Judge Kirtan Khalsa issued an order (Doc. 7) setting conditions of release. The Defendant pled guilty to Count 2 of the indictment pursuant to a plea agreement (Doc. 36) on May 6, 2020. Leading up to and following the Defendant's guilty plea, his conditions of release were modified several times, most recently in an Order Granting Defendant's Unopposed Motion to Amend Conditions of Release (Doc. 38) issued by Magistrate Judge Jerry H. Ritter on May 19, 2020. That order allowed the Defendant to travel for work within the State of New Mexico outside of Bernalillo County.

¹ The previous version of this motion (Doc. 50) did not include the Defendant's position on the motion. This amended motion includes that position and is otherwise identical to the original motion.

On August 9, 2021, the Defendant was taken into custody by the Sturgis Police Department in South Dakota for Possession of a Controlled Substance, No Motorcycle Endorsement, Financial Responsibility, Possession of Drug Paraphernalia and Alteration of License Plate. A Petition for Action on Conditions of Pretrial Release (Doc. 44) was filed by U.S. Probation on August 10, 2021, based on the violation of conditions of release including leaving the State of New Mexico without permission and committing a state crime. The Defendant pled guilty to Unauthorized Possession of Controlled Drug or Substance on August 14, 2021. The Defendant was released from state custody, taken into federal custody on a warrant issued pursuant to U.S. Probation's petition, and appeared in federal court in the District of South Dakota on August 23, 2021. That Court ordered the Defendant to appear at court proceedings and to follow all conditions previously imposed in the District of New Mexico. Yesterday, August 31, 2021, the Defendant appeared at a hearing before Magistrate Judge Karen B. Molzen. The parties determined that a motion to the District Court regarding revocation of conditions of release was likely appropriate.

By statute, "The attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court." 18 U.S.C. § 3148(b). That same subsection states that "To the extent practicable, a person charged with violating the condition of release that such person not commit a Federal, State, or local crime during the period of release, shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated." *Id.* The order setting conditions of release in effect on August 9, 2021, when the Defendant committed the state crime of possession of a controlled substance in South Dakota, was Judge Ritter's May 19, 2020 order. The Government makes this motion under 18

U.S.C. § 3148 to initiate proceedings before Judge Ritter on the revocation of the Defendant's conditions of release based on the violation of those conditions.

For these reasons the United States respectfully requests that the Court order that a hearing be scheduled before Judge Ritter on revocation of conditions of presentencing release. Because the Defendant's recent conduct indicates that he is unlikely to comply with his current conditions, the United States respectfully asks the Court to rule on this motion expeditiously.

The Defendant, through counsel, opposes this motion.

Respectfully submitted:

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I HEREBY CERTIFY that I filed the foregoing pleading electronically through the CM/ECF system which caused the opposing party of record to be served by electronic means, as reflected on the Notice of Electronic Filing, and other methods of service as indicated therein on September 1, 2021:

/s/
Paul Schied
Assistant United States Attorney